Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 4 March 2024 – Thursday 14 March 2024

Virtual Hearing

Name of Registrant:	**Mohammad Nawshad Moosuddee**	
NMC PIN	91A1321E	
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) – 12 June 1994	
Relevant Location:	London	
Type of case:	Misconduct	
Panel members:	Gregory Hammond Allwin Mercer Kevin Connolly	(Chair, Lay member) (Registrant member) (Lay member)
Legal Assessor:	Neil Fielding	
Hearings Coordinator:	Zahra Khan	
Nursing and Midwifery Council:	Represented by Michael Smalley, Case Presenter	
Mr Moosuddee:	Present and represented by Gheerjanand Bisnauthsing	
Facts proved by admission:	Charges 1e, 1f, 1g, and 1h	
Facts proved:	Charges 1a, 1bi, 1bii, 1cii, 1d, 2, 3, 4 and 6	
Facts not proved:	Charges 1ci and 5	
Fitness to practise:	Impaired	
Sanction:	**Suspension order (4 months)**	

Interim order: **Interim suspension order (18 months)**

Details of charge

That you, a registered nurse:

1. On 28 October 2020

    a. Stated to colleague A words to the effect that colleague C had asked you to go and see patient X. **[PROVED]**

    b. Stated to colleague B words to the effect that:

        i. You had operated on patient X with colleague C. **[PROVED]**
        ii. Colleague C said that it was ok for you to see patient X. **[PROVED]**

    c. Stated to colleague D words to the effect that:

        i. You were a private anaesthetist working with colleague C. **[NOT PROVED]**
        ii. You were with patient X during their surgery. **[PROVED]**

    d. Asked to take a picture with patient X. **[PROVED]**

    e. Removed all or part of your face mask when in patient X's room. **[PROVED BY ADMISSION]**

    f. Made physical contact with patient X's hand with your hand. **[PROVED BY ADMISSION]**

    g. Took a picture with patient X's surgeon. **[PROVED BY ADMISSION]**

h. Visited patient X without clinical justification in that you were not involved in patient X's care. **[PROVED BY ADMISSION]**

2. Your action at 1a was dishonest because you knew colleague C had not asked you to see patient X. **[PROVED]**

3. Your action at 1bi was dishonest because you knew you had not been involved in the operation on patient X. **[PROVED]**

4. Your action at 1bii was dishonest because you knew colleague C had not asked you to see patient X. **[PROVED]**

5. Your action at 1ci was dishonest because you knew you were not a private anaesthetist working with colleague C. **[NOT PROVED]**

6. Your action at 1cii was dishonest because you knew you had not been with patient X during their surgery. **[PROVED]**

AND in light of the above, your fitness to practise is impaired by reason of your misconduct.

Decision and reasons on application to admit hearsay evidence

Whilst the panel was in camera to discuss any potential questions to put before the witness, Colleague D, it came across a hearsay question that relates to charge 1d. The panel then invited the parties, excluding Colleague D, to join the public hearing to hear their submissions.

Mr Smalley, on behalf of the Nursing and Midwifery Council (NMC), invited the panel to decide on the admissibility of the comments made by Patient X and/or his wife, in respect to the issue of taking photographs, namely within charge 1d. He submitted that, under

Rule 31, it is fair and relevant for the panel to ask Colleague D a hearsay question. He submitted that the evidence that the NMC relies upon, in relation to charge 1d, is that of another witness, namely Witness 5, a consultant pain nurse at the Hospital who was also the Chief Investigator. Witness 5 is not due to give live evidence but has provided a written statement that is highly relevant and that was produced for the purpose of the internal investigations.

Mr Bisnauthsing, on your behalf, objected to this application. He submitted that Patient X and/or his wife did not provide a statement. He submitted that, by allowing the application, you will not have the opportunity to cross examine Patient X and/or his wife on this issue.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel gave this application serious consideration. It took into account the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) and considered the seven points of guidance. The panel considered whether you would be disadvantaged.

In the circumstances, the relevance of the evidence was not challenged, and the panel came to the view that it would be fair to accept into evidence the written statement of Witness 5 and accept into evidence the hearsay evidence of Colleague D. The panel considered that there was no good reason for the alleged direct witnesses' non-attendance and no evidence of any efforts by the NMC to secure their attendance. However, these factors were outweighed by the panel's consideration that charge 1d is not the most serious of the charges you face. Further, that the evidence is not sole and decisive. The panel took account of all the relevant circumstances relating to these events, including your admissions as to the reasons for you wishing to visit Patient X (namely that he was your favourite footballer), the fact that you earlier sought a

photograph with the consultant that operated on Patient X and your admissions as to what you said to the patient and his wife at the time. There was therefore evidence relating to your motivation and actions beyond the hearsay evidence provided. There is no suggestion of fabrication, merely the interpretation of the words you used. You also had sufficient prior notice of the evidence.

The panel considered the fact that you could challenge the evidence by questioning a live witness and give evidence on your own behalf. In addition, the panel could ensure fairness by considering the appropriate weight to be attached to this evidence having regards to the limitations on your ability to challenge it. In all the circumstances, the panel decided it was relevant and fair to admit the hearsay evidence.

The panel would give what it deemed appropriate weight once it heard and evaluated all the evidence before it.

Background

The charges arose whilst you were employed as a registered nurse by Cromwell Hospital (the Hospital). You joined the NMC register in July 2000.

In July 2020, you started your employment at the Hospital working as a scrub nurse in the operating theatre, specialising in orthopaedics. You were referred to the NMC on 25 November 2020 by the Divisional Manager at the Hospital.

The alleged facts and nature of the allegations are as follows.

On 28 October 2020, Patient X, a high-profile patient, was receiving treatment at the Hospital and was accommodated in a private suite (“the Suite”) within a ward (“the Ward”) at the Hospital.

A consultant surgeon, namely Colleague C, had carried out an operation on Patient X at the Hospital following which Patient X had returned to the Suite, where his wife was also present. You were not part of the surgical team that cared for Patient X.

At around 18:00 on 28 October 2020 you allegedly went to the Ward and attempted to use your pass to gain access to it. While in the Ward you allegedly spoke to Colleague A, who was the nurse in charge that day, and said that Colleague C had asked you to go and see Patient X to do something for them. You allegedly greeted Colleague B outside the Suite and told her that you had been in theatre with Patient X, and that Colleague C had said that it was okay for you to visit Patient X. Colleague B therefore gave you access to the Suite.

When you entered the Suite, you allegedly lowered the face mask that you were wearing so that it was under your chin and your mouth and nose were uncovered. Patient X and his wife later said they found this distressing as they were concerned about Covid-19 and other arrangements put in place to protect them.

Allegedly, you shook or held Patient X's hand, thereby making direct physical contact with him. In doing so, with no clinical need for contact, and in lowering your mask, you failed to comply with the Hospital's Covid-19 Standard Operating Procedure ("SOP").

You also allegedly asked Patient X if he was "doing pictures". While you later explained that you did not mean this as asking for a selfie, Patient X and his wife interpreted your question as such. In the event, you did not take a photograph of Patient X.

You then left the Suite and allegedly encountered Colleague D. Colleague D introduced herself and said that you needed to introduce yourself to reception when coming on to the Ward. You allegedly apologised to Colleague D and told her that you were a private anaesthetist working with Colleague C. You also allegedly said that you had been in the operating room during Patient X's surgery and just wanted to see how he was recovering.

When Colleague D went in to meet Patient X, he asked her who you were and they explained that you were trying to take a picture of him.

Further, on the same date, you allegedly requested and took a “selfie” photograph with Colleague C, which you were later asked to delete. At or soon after 19:00 on 28 October 2020, you were informed that the Hospital had decided to suspend you from your employment.

The next day, the consultant pain nurse, namely Witness 5, visited Patient X to speak to him about the incident on 28 October 2020. Patient X and his wife allegedly confirmed to Witness 5 that you had dropped your face mask, went to shake hands with Patient X and asked if Patient X was doing ‘photos or selfies’. Witness 5 was concerned about the spread of infection and she also explained that the Hospital was treating the incident as a breach of confidentiality and privacy. Neither Patient X nor his wife wished to provide a formal witness statement to the Hospital.

Witness 5 was asked to assist with the investigation into the incident on 28 October 2020.

As part of her investigation, Witness 5 held a meeting with you on 30 October 2020. You admitted visiting Patient X but said this was a matter of continuity of care for him, as you had been caring for him before. You said Patient X was your favourite football player and that you were doing Colleague C a favour. You also said that the “Nurse outside” the Suite had given you permission to enter it once you had shown her your badge.

Witness 5 completed her investigation summary on 10 November 2020, finding that there was a case to answer in relation to potential breaches by you of a number of the Hospital’s codes of practice and policies, as well as a potential breach of its Covid-19 SOP guidelines.

A disciplinary hearing into allegations against you of gross misconduct took place on 16 November 2020. You were dismissed from your employment at the Hospital.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Bisnauthsing, who informed the panel that you made admissions to charges 1bii, 1e and 1f. However, it emerged during cross examination of Colleague B that Mr Bisnauthsing had provided the panel with the wrong admitted charges.

The panel heard legal advice from the legal assessor. He advised the panel that an 'equivocal' or mistaken plea is not addressed specifically under the NMC Rules 2004 or in the Nursing and Midwifery Order 2001. However, he advised the panel that it does have power to manage its own proceedings to ensure fairness to all parties. If an admission has clearly been made in error and the evidence has not been finalised, and factual determinations made, provided that it is fair to do so, the panel can deal with the matter as if it remains contested. Mr Smalley did not object to the correction of the mistake.

The panel then heard from Mr Bisnauthsing again who confirmed that you made admissions to charges 1e, 1f, 1g and 1h.

The panel therefore finds charges 1e, 1f, 1g and 1h proved in their entirety, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Smalley and Mr Bisnauthsing.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Colleague A: Senior Staff Nurse at Cromwell Hospital at the time of the incident
- Colleague B: Senior Staff Nurse at Cromwell Hospital at the time of the incident
- Colleague D: Band 5 Staff Nurse at Cromwell Hospital at the time of the incident
- Witness 4: Team Lead for Theatre at Cromwell Hospital at the time of the incident

The following witness statements were admitted as agreed written evidence:

- Witness 5: Consultant Pain Nurse at Cromwell Hospital at the time of the incident
- Witness 6: Lead for Orthopaedic Surgery at Cromwell Hospital at the time of the incident

The panel also heard evidence from you under oath.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

The panel then considered each of the disputed charges and made the following findings.

Charge 1a

"That you, a registered nurse:

On 28 October 2020: Stated to colleague A words to the effect that colleague C had asked you to go and see patient X".

This charge is found proved.

In reaching this decision, the panel took into account Colleague A's written statement dated 13 April 2022 and her oral evidence. It also took into account your written statement dated 18 February 2024 and your oral evidence.

The panel had regard to Colleague A's statement, which stated:

'… Mr Moosuddee spoke to us and said something like [Colleague C] had asked him to go and see [Patient X] to do something for them…'.

The panel found that Colleague A's evidence was credible, and you accepted in your evidence that Colleague C did not ask you to see Patient X. It was of the view that you were not part of the team that was operating on Patient X despite your assertion that you prepared the theatre the night before. Witness 4, in his oral evidence, confirms that setting up a theatre the night before is no justification for saying you are part of the assigned operating team.

You initially said that you were working with Colleague C at the time of Patient X's operation, which the panel found to be untrue. The theatre staffing rota also shows that you were not assigned to that theatre until after Patient X had been operated on. As such, the panel preferred Colleague A's account of events over yours. The panel acknowledged that you accepted that you visited Patient X without clinical justification which supports the fact that you were acting outside of your clinical requirements. The panel was of the view

that Colleague A was given the impression, by you, that you had permission from Colleague C to be let in to see Patient X. It was also of the view that you would know that it was highly likely that you would gain access by saying Colleague C had asked you to go and see Patient X.

On the balance of probabilities, the panel determined that it was more likely than not that you stated to Colleague A words to the effect that Colleague C had asked you to go and see Patient X.

The panel therefore found charge 1a proved.

Charge 1bi

"That you, a registered nurse:

On 28 October 2020: Stated to colleague B words to the effect that: You had operated on patient X with colleague C".

This charge is found proved.

Charge 1bii

"That you, a registered nurse:

On 28 October 2020: Stated to colleague B words to the effect that: Colleague C said that it was ok for you to see patient X".

This charge is found proved.

The panel decided to look at charges 1bi and 1bii together as they are intrinsically linked to one another.

In reaching its decision, the panel took into account Colleague B's written statement dated 12 January 2022, her handwritten statement dated 30 October 2020, and her oral evidence. It also took into account your written statement dated 18 February 2024 and your oral evidence.

The panel had regard to Colleague B's written statement, which stated:

> *'… During my shift on 28 October 2020, I was in the corridor when I first spotted the gentleman. The gentleman had allowed himself in to the ward. The gentleman had approached me and said "hello". The gentleman had told me he was in theatre with [Patient X] and explained that [Patient X]'s consultant Colleague C said it was ok for him to see Patient X. As the gentleman had a theatre uniform on, I did not think anything further and allowed him to enter the VIP suite…'.*

The panel also had regard to Colleague B's handwritten local statement, which stated:

> *'On the evening of the 28/10/20, a gentleman in green scrubs, with Bupa ID Badge, walked into the ward, said he operated with Colleague C on patient in Ambassador Suite, and that Colleague C said it's ok to see his patient. Nurse M attempted to use his ID Badge to enter the Ambassador Suite, it didn't work, so I [Colleague B] let him in…'.*

The panel had further regard to your written statement, which stated:

> *'… I went upstairs to the ward to see Patient X. I could not enter the room. I saw a nurse and introduced myself by showing her my hospital badge and stated which department I was from. I also said to the nurse that I had come to visit Patient X. The nurse allowed me to visit Patient X… I did not say that I operated with the surgeon on Patient X. The surgeon never knew and never agreed for me to see Patient X and I did not ask Patient X for a photo…'.*

The panel was of the view that Colleague B was clear, at the time, that you told her that you were in Theatre with Patient X. It found Colleague B's first statement to be a near contemporaneous account. The panel was of the view that you gave Colleague B the impression by what you said that it was ok for you to visit Patient X and that you had a legitimate reason to be there with Patient X, with Colleague C's permission. Thus, the panel preferred Colleague B's recollection to yours as it was of the view that Colleague B had no reason to doubt what you were saying to her, at the time.

On the balance of probabilities, the panel determined that it was more likely than not that you stated to Colleague B words to the effect that you had operated on Patient X with Colleague C, and that Colleague C said that it was ok for you to see Patient X.

The panel therefore found charges 1bi and 1bii proved.

Charge 1ci

"That you, a registered nurse:

On 28 October 2020: Stated to colleague D words to the effect that: You were a private anaesthetist working with colleague C".

This charge is found NOT proved.

In reaching its decision, the panel took into account Colleague D's written statement dated 18 December 2021, her local statement dated 9 November 2020, and her oral evidence. It also took into account your written statement dated 18 February 2024 and your oral evidence.

The panel was of the view that there was not enough evidence to suggest that you stated that you were a private anaesthetist working with Colleague C and that this was not

consistent with any evidence from other colleagues/witnesses. Thus, the evidence before the panel did not satisfy the burden of proof.

The panel noted that Colleague D was unable to recall this particular detail which it considered would have been a significant concern if you did state words to the effect that you were a private anaesthetist. It also noted that you identified who you were via your hospital badge which has your name on it and potentially your job role. It was of the view that it was likely that you said you were visiting Patient X as you were part of the operating team. At the time, due to Covid, nurses and doctors were wearing the same-coloured scrubs. It was therefore of the view that Colleague D, in identifying you as an anaesthetist in her local statement, may have been mistaken.

On the balance of probabilities, the panel determined that it was unlikely in all of the circumstances that you stated to Colleague D words to the effect that you were a private anaesthetist working with Colleague C.

The panel therefore found charge 1ci not proved.

Charge 1cii

> "That you, a registered nurse:
>
> > On 28 October 2020: Stated to colleague D words to the effect that: You were with patient X during their surgery".

This charge is found proved.

In reaching its decision, the panel took into account Colleague D's written statement dated 18 December 2021, her local statement dated 9 November 2020, and her oral evidence. It also took into account your written statement dated 18 February 2024 and your oral evidence.

The panel had regard to Colleague D's witness statement, which stated:

> *'During my shift on the 28 October 2020, I was coming out another patient's room when [Colleague B] told me that a gentleman was walking around the ward and went into the Ambassador's Suite. [Colleague B] … tried to identify him but he did not introduce himself. I made my way to the Ambassadors Suite where I met the gentleman in the hallway and questioned who he was. I told him "I don't know you". His response was quite vague and that he was with the patient during surgery. He claimed that he was checking on [Patient X]…'.*

The panel also had regard to your written statement, which stated:

> *'In regard to the statement made by [Colleague D], I do not agree with the statement that I walked straight into the Ambassador Suite without introducing myself. I did inform [Colleague B] as to who I was and where I worked…'.*

You denied meeting Colleague D at all, but did refer in your oral evidence to seeing another nurse inside the Suite. The panel was of the view that Colleague D's recollection of a brief encounter with you was clear, even if she could not remember the exact words used. On balance, the panel was of the view that by your words you gave the impression to Colleague D that you were with Patient X during their surgery, which is similar to its findings and consistent with charges 1a, 1bi and 1bii.

On the balance of probabilities, the panel determined that it was more likely than not that you stated to Colleague D words to the effect that you were with Patient X during their surgery.

The panel therefore found charge 1cii proved.

Charge 1d

"That you, a registered nurse:

On 28 October 2020: Asked to take a picture with patient X".

This charge is found proved.

In reaching this decision, the panel took into account your written statement dated 18 February 2024 and your oral evidence. It also took into account Colleague D's written statement dated 18 December 2021 and her oral evidence, and the hearsay evidence supplied by Witness 5 via her written statement dated 20 April 2022.

The panel noted that you admit to saying 'are you doing photos' to Patient X. There is hearsay evidence to suggest that you did ask for a photograph with Patient X as you had done with Colleague C a short time earlier. The panel was of the view (given your stated reasons for visiting the patient in the first place) that if Patient X had said 'yes', you would have taken one as Patient X was your favourite footballer.

The panel decided from your question 'are you doing photos', and in light of the surrounding circumstances, it can be interpreted as a request for a photograph. Your explanation that you asked if Patient X was doing photos was some form of a protective enquiry, on behalf of the Hospital, was not one which the panel finds plausible.

The panel had regard to Colleague D's statement, which stated:

'… I went into the Ambassador Suite to meet with [Patient X]. He was with his wife in the room. [Patient X] was asking me who the gentleman was and explained that the gentleman was trying to take a picture…'.

The panel also had regard to Witness 5's statement, which is hearsay evidence. It stated:

'… I think [Patient X] used the word selfies and the wife said photos…'.

The panel was of the view that the hearsay evidence shows that Patient X and his wife were under the impression that they were being asked for a picture to be taken by you, and that this is the obvious and only plausible implication in the circumstances when asking whether someone ‘is doing photos’. As such, the foundation of the panel’s decision is its interpretation of the words that you admitted.

On the balance of probabilities, the panel determined that it was more likely than not that you asked to take a picture with Patient X

The panel therefore found charge 1d proved.

Charge 2

> “Your action at 1a was dishonest because you knew colleague C had not asked you to see patient X”.

This charge is found proved.

In reaching its decision, the panel took into account all the relevant evidence before it.

The panel was of the view that you did know what you were doing and that an ordinary member of the public would find your actions to be dishonest. It was of the view that you created a position which justified doing what you did, which in itself is dishonest, and gave a false impression to several colleagues.

The panel was of the view that you had no legitimate reason to visit Patient X and that you have admitted this. You knew you should not have been there by your own admission.

The panel found that you undertook a course of conduct to present a misleading impression with a view to gaining access to Patient X, your favourite footballer, and that

you gave an impression through your words that Colleague C had asked you to see the patient.

The panel therefore found charge 2 proved.

Charge 3

> "Your action at 1bi was dishonest because you knew you had not been involved in the operation on patient X".

This charge is found proved.

Charge 4

> "Your action at 1bii was dishonest because you knew colleague C had not asked you to see patient X".

This charge is found proved.

The panel decided to look at charges 3 and 4 together, as it did with charges 1bi and 1bii. as they are intrinsically linked to one another.

In reaching this decision, the panel took into account all the relevant evidence before it.

The panel was of the view that you said words to the effect that you were operating on Patient X with Colleague C which is not true and falsely gave the impression in a misleading way. It was of the view that an ordinary member of public would find your actions to be dishonest.

The panel was also of the view that you have taken an opportunity and embellished a story as to why you went to see Patient X. You accepted that during your disciplinary interview at the Hospital you were not present at the time of the operation.

The panel therefore found charges 3 and 4 proved.

Charge 5

> "Your action at 1ci was dishonest because you knew you were not a private anaesthetist working with colleague C".

This charge is found NOT proved.

This charge falls away as the panel found charge 1ci not proved.

The panel therefore found charge 5 not proved.

Charge 6

> "Your action at 1cii was dishonest because you knew you had not been with patient X during their surgery".

This charge is found proved.

In reaching this decision, the panel took into account all the relevant evidence before it.

For the same reasons as its findings in respect of charges 2, 3, and 4, the panel was of the view that you gave the impression to Colleague D that you had been in surgery with Patient X when you were not, and an ordinary member would find your actions to be dishonest.

The panel therefore found charge 6 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely, and professionally.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage, and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Mr Smalley invited the panel to take the view that the facts found proved amount to misconduct. He directed the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Mr Smalley identified the specific, relevant standards where he said your actions amounted to misconduct. He referred to paragraphs 1, 1.1, 5, 5.1, 19, 19.3, 19.4, 20.1, 20.2, and 20.5 of the Code.

Mr Smalley submitted that your actions fell below the standards expected of a registered nurse and invited the panel to find that your actions amount to serious misconduct.

Mr Bisnauthsing submitted that you have been a registered nurse since 1994 and scrub nurse since 1995. He submitted that this incident was an unfortunate mistake and that it was out of your character.

Submissions on impairment

Mr Smalley moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Smalley addressed the panel regarding the test in *Grant* and submitted that all four limbs are engaged. He submitted that the concerns found proved can be separated into three categories: concerns regarding infection control, breach of privacy, and honesty and integrity.

Mr Smalley submitted that Patient X was placed at unwarranted risk of infection, namely COVID, and that you acted dishonestly. He submitted that both factors are liable to bring the profession into disrepute. He also submitted that impairment is a forward-thinking exercise and looks at the risk that your actions pose in the future.

Mr Smalley submitted that the concerns regarding dishonesty are an integral part of this case and suggest that they are matters of an attitudinal nature which are more difficult to put right. He submitted that the panel has heard very limited insight into the concerns raised and therefore there is a significant risk of repetition. On these grounds, he submitted that there is a risk of repetition, and a finding of impairment is necessary on both grounds of public protection and public interest to uphold public confidence in the profession.

Mr Bisnauthsing submitted that you are remorseful and accept the decision of the panel. He submitted that you had been working with VIP patients and this had not happened before. He submitted that this event was therefore a standalone incident that was opportunistic and spontaneous with no direct gain on your behalf. He also submitted that the incident was outside professional practice and accepted that what you did was not in conformity with the fundamental tenets of a registered nurse.

In terms of impairment, Mr Bisnauthsing submitted that you are remorseful and that you have learned a lot through the experience. He also submitted that you are willing to make changes to your attitude. He submitted that your actions, at the time of the incident, were out of character and that you have been in the nursing profession for 30 years with no previous concern.

Mr Bisnauthsing therefore submitted that your fitness to practice is not impaired. He submitted that it was merely your misjudgement, taking into account your many years of practice as a nurse. He submitted that the evidence suggests that this was impulsive behaviour. He further submitted that your actions can be remediated and that, despite the fact dishonesty was proved, this conduct will not be repeated in the future. Additionally, he submitted that there was no loss on Patient X's behalf and no gain on your behalf. He submitted that there was no infection through your actions and, as such, nothing had happened in terms of clinical practice.

Mr Bisnauthsing also submitted there was no impairment on public interest grounds.

The panel accepted the advice of the legal assessor which included reference to matters from a number of relevant judgments, including: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel found that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code, specifically the following:

> *'**1 Treat people as individuals and uphold their dignity***
>
> *To achieve this, you must:*
>
> *1.1. treat people with kindness, respect and compassion*
>
> ***5 Respect people's right to privacy and confidentiality***
>
> *To achieve this, you must:*
>
> *5.1 respect a person's right to privacy in all aspects of their care*
>
> ***19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice***

To achieve this, you must:

19.3 keep to and promote recommended practice in relation to controlling and preventing infection

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the above standards of the Code are relevant and engaged in this case.

The panel found that your actions in charges 1a, 1bi, 1bii, 1c, 1d, 1e, 1f, 1h, 2, 3, 4 and 6 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. It took into account the circumstances at the time, a significant rise in the number of COVID cases and prior to the implementation of the national COVID vaccination programme.

The panel did not find that charge 1g amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide, if as a result of the misconduct, your fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust,

nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that Patient X was put at unwarranted risk of harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty serious.

Regarding insight, the panel accepted that you made some admissions. However, you did not fully demonstrate an understanding of how your actions put Patient X at a risk of harm, nor an understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession. Further, you have not demonstrated full insight into the failings nor demonstrated how you would handle the situation differently in the future.

The panel had regard to the following evidence which demonstrates your limited insight.

In the local investigation interview between you and Witness 5, dated 10 November 2020, you were asked what your understanding of patient privacy and dignity was. You stated:

'Patients have a right to privacy in hospital. You have to be able to be confidential, basically to make the patient feel comfortable…'.

However, you also confirmed that the policy and what your obligations are under this policy were not clear to you.

In the same local investigation interview, you were asked whether your behaviour was in line with the NMC code of practice. You responded:

'I think so, I don't think I disrespected the patient's privacy.'

In your reflective account, in respect of the specific concerns that have been raised about you, you stated:

> *'… I feel it has been over exaggerated and I have been treated unfairly because the patient is a high profile'.*

In the meeting minutes of the Disciplinary Hearing between you and the Divisional Manager, dated 16 November 2020, you stated:

> *'On reflection now I understand I shouldn't have gone to see the patient… I am human after all and my emotion took over… I Didn't put the patient's health at risk at all I have not put the hospital reputation at risk. In fact, during my brief visit I did mention that the Cromwell is a good hospital with outstanding reputation, and he will be well looked after….'.*

You also stated:

> *'On reflection I've been extremely naive I should not have gone to see the patient. I didn't realise the gravity of the situation I am extremely sorry. My intention was never to be disloyal, to deceive, cause any malice or cause any harm. I did not comprehend the celebrity status. I am extremely remorseful and very sorry'.*

The panel therefore determined, from the above evidence, that your insight is limited. It had not seen or been presented with any evidence of further developed insight, including an up-to-date reflective statement.

The panel recognises that dishonesty is not easily remediable. However, in this case, it was satisfied that the misconduct is capable of being addressed as the incident was a one-off spontaneous or opportunistic act in an otherwise long and unblemished career. The panel did not have any evidence before it to determine whether you have taken steps to strengthen your practice.

Further, the panel was of the view that there is also a risk of repetition of the other areas of regulatory concern, namely the potential patient harm as you breached COVID protocols and did not maintain infection control, and your breach of Patient X's right to privacy. It has no evidence before it to demonstrate whether you have undertaken any retraining or fully reflected on these concerns. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel considered this case very carefully and decided to make a suspension order for a period of four months with a review. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel accepted the advice of the legal assessor.

Submissions on sanction

In the Notice of Hearing, dated 1 February 2024, the NMC had advised you that it would seek the imposition of a suspension order for a period of four months, with a review, if it found your fitness to practise currently impaired. During the course of the hearing, the NMC revised its proposal. Mr Smalley submitted that a striking-off order is more appropriate in light of the panel's findings.

Mr Smalley submitted that the following aggravating features are engaged:

- Misuse of power directly related to your nursing practice.
- Patient X was placed at risk at harm.
- Your lack of insight.

Mr Smalley submitted that there is one mitigating feature, namely that this appears to be a one-off isolated incident.

Mr Smalley submitted that dishonesty is the most serious aspect of the case. He submitted that you have been dishonest and placed a patient at risk of harm. In these circumstances, he submitted that the appropriate sanction is that of a striking-off order.

Mr Bisnauthsing submitted that the following mitigating features are engaged:

- You have an unblemished nursing career of over 30 years.
- You have made partial admissions.
- This was an isolated incident of misconduct.
- No actual harm was caused to patients.
- No personal gain.
- You demonstrated your remorse and have been candid, as seen in the Disciplinary Hearing dated 16 November 2020.

- There was no element of premeditation, nor were your actions calculated. Instead, this was an opportunistic act which you have accepted.
- You have a history of work experience with a good reputation.

Mr Bisnauthsing submitted that it is unlikely that you will bring the profession into disrepute in the future. He submitted that the dishonesty is at the lower end of the spectrum, and not high enough to impose a severe sanction. He also submitted that your actions undermined trust, as opposed to destroyed trust, in the profession.

Mr Bisnauthsing submitted that there was no abuse of power. He submitted that you agree that your behaviour was unacceptable and that this will not be repeated as you have had plenty of time to reflect. He submitted that there is a need for proportionality when the panel is considering which sanction to impose.

Ms Bisnauthsing submitted that the panel should look at a lesser sanction as it was a single incident of misconduct. He submitted that your misconduct can be remedied which you have not had the opportunity to do, other than reflect upon your actions.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Misuse of position as member of staff.
- Patient X was put at risk of harm.

- Lack of evidence of full insight.

The panel also took into account the following mitigating features:

- One-off and opportunistic incident.
- Not financially motivated.
- Showed remorse in the local interviews.
- Partial admissions.
- Unblemished career of 35 years without any regulatory concerns.

In regard to dishonesty, after reviewing the NMC's guidance on *Considering sanctions on serious cases*, the panel found your misconduct, whilst serious, was at the less serious end of the spectrum of dishonesty for the reasons set out in the aggravating and mitigating features. It also found that you did not deliberately breach a duty of candour.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the dishonesty element. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable, and workable.

The panel is of the view that, in respect of the dishonesty and breach of privacy identified, there are no practicable or workable conditions that could be formulated, given the nature of some of the charges in this case. The misconduct identified in this case was not something that can be addressed through a conditions of practice order.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public. The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

The panel was satisfied that this was a single instance of opportunistic misconduct and that there was no evidence before it to indicate harmful or deep-seated attitudinal concerns. The panel considered that you had shown some insight in the local investigation interviews, though this was not fully developed. The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with your remaining on the register and that a suspension order would therefore be appropriate in your case.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate for the following reasons:

- The panel was of the view that public confidence in nursing can be maintained if you are not removed from the register permanently.
- A striking-off order is not the only sanction which will be sufficient to protect patients and members of the public, maintain professional standards and uphold the public interest.

Whilst the panel acknowledges that suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

In making its decision, the panel carefully considered the submissions of Mr Smalley in relation to the sanction that the NMC was seeking in this case. However, the panel considered that the imposition of a striking-off order would be wholly disproportionate in light of its findings.

The panel determined that a suspension order for a period of four months, with a review, was appropriate in this case to mark the seriousness of the misconduct and give you sufficient time to provide reflections and evidence on your strengthening practice and insight.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- A detailed reflective account demonstrating developed insight into all three areas of regulatory concern (infection control, breach of privacy and dishonesty). This should also demonstrate the effect that your misconduct had on patients, employees, and the reputation of the profession.
- Testimonials attesting to your character and your professionalism as a nurse from any or all of the following: a current or past employer; current or previous work colleagues; colleagues in any voluntary work.
- Evidence of professional training in infection control.

This will be confirmed to you in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the suspension sanction takes effect.

The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Smalley. He submitted that an interim suspension order should be imposed for a period of 18 months to cover the 28-day appeal period and the subsequent period should an appeal be lodged. He submitted that this is necessary for the same reasons as given by the panel regarding the substantive order.

The panel also took into account the submissions of Mr Bisnauthsing. He submitted that you understood the need for an interim order and that you had no objection to the panel making one. However, he submitted that as you do not plan to appeal the substantive suspension order, an interim suspension order for a period of 12 months would suffice.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order as to do otherwise would be incompatible with its earlier findings. The panel decided that the length of this interim suspension order should be 18 months to cover the likely time taken by an appeal should one be lodged.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.